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JUN 24 2009

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3 UNITED STATES BANKRUPTCY COURT

4 EASTERN DISTRICT OF CALIFORNIA

5

6 In re:) Case No. 08-23603-D-7
 7 GUY TYRONE LYNN and)
 JAMIE ARCHER LYNN,) Docket Control No. JRR-6
 8)
 Debtors.) Date: June 17, 2009
 9) Time: 10:00 a.m.
) Dept: D

10 This memorandum decision is not approved for publication and may
 11 not be cited except when relevant under the doctrine of law of
 the case or the rules of claim preclusion or issue preclusion.

12 MEMORANDUM DECISION

13 On April 29, 2009, John R. Roberts, chapter 7 trustee in
 14 this case, filed a Trustee's Objection to Property Claimed as
 15 Exempt ("the Objection"). For the reasons set forth below, the
 16 court will sustain the Objection in part and overrule it in part.

17 I. INTRODUCTION

18 Debtors Guy Tyrone Lynn and Jamie Archer Lynn (the
 19 "debtors") commenced this case under chapter 13 of the United
 20 States Bankruptcy Code on March 25, 2008. The case was converted
 21 to chapter 7 by order dated January 8, 2009, on the motion of
 22 creditor Viola Archer. On April 3, 2009, the debtors filed an
 23 amended schedule of exemptions, and on April 29, 2009, the
 24 trustee filed the Objection, together with a request for judicial
 25 notice and an exhibit. On June 3, 2009, the debtors filed
 26 opposition to the Objection, together with their declaration and
 27 exhibits. The court took the matter as submitted at a hearing
 28 held June 17, 2009.

II. ANALYSIS

This court has jurisdiction over the Objection pursuant to 28 U.S.C. §§ 1334 and 157(b)(1). The Objection is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

5 The objecting party, in this case the trustee, bears the
6 burden of proving that a claimed exemption is improper. Fed. R.
7 Bankr. P. 4003(c). Because a claimed exemption is presumptively
8 valid, the objecting party must produce evidence to rebut the
9 presumptively valid exemption, whereupon the burden of production
10 shifts to the debtor to demonstrate that the exemption is proper.
11 The burden of persuasion remains with the objecting party. In re
12 Carter, 182 F.3d. 1027, 1029-30 n.3 (9th Cir. 1999). Exemptions
13 are to be liberally construed in favor of debtors. In re Lucas,
14 77 B.R. 242, 245 (9th Cir. BAP 1987).

The court will take the trustee's objections in order.

A. Household Goods and Furnishings

17 First, the trustee objects to the debtors' claim of
18 exemption of \$9,000 in "crafts," on the ground that these items
19 do not qualify as normal household goods and personal effects.
20 The debtors respond that these items are separate and apart from
21 the assets of their business, Wild Things Beads, and are
22 ordinarily and reasonably necessary for their station in life and
23 manner of living as artists and craftsmen.

24 The statute under which the debtors claim these items as
25 exempt permits the exemption of "household furnishings,
26 appliances, provisions, wearing apparel and other personal
27 effects," to the extent they are "ordinarily and reasonably
28 necessary to, and personally used or procured for use by," the

1 debtors and their family at their principal place of residence.
 2 Cal. Civ. Proc. Code § 704.020(a).¹ In assessing whether a
 3 particular item meets this definition, the court is to consider
 4 "(1) [t]he extent to which the particular type of item is
 5 ordinarily found in a household," and "(2) [w]hether the
 6 particular item has extraordinary value as compared to the value
 7 of items of the same type found in other households."
 8 § 704.020(b).

9 The Ninth Circuit Bankruptcy Appellate Panel in In re Lucas,
 10 77 B.R. 242, 245, 246 (9th Cir. BAP 1987), held that the exercise
 11 bike, camera equipment, golf clubs, and Hummel figurines at issue
 12 in that case were household goods subject to exemption, relying
 13 on the proposition that the court is to consider "'the station in
 14 life of the owner and the manner of comfortable living to which
 15 he has become accustomed.'" 77 B.R. at 245, citing Independence
 16 Bank v. Heller, 275 Cal. App. 2d 84, 87 (1969).

17 Viewed in this light, the court finds the craft items to be
 18 household goods, despite the fact that their value appears high.²
 19 The debtors have provided a detailed list of the items included
 20 and have testified that these items "were maintained by [them]
 21 separately from [their] business assets," and "are not and have
 22 not been for sale as part of [their] business." Balancing this
 23 testimony against the trustee's rather summary objection, the
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25 1. Unless otherwise indicated, all further code and section
 26 references will be to the California Code of Civil Procedure.

27 2. The value of the craft items is listed at \$9,000,
 28 approximately 62% of the total value of the debtors' household
 goods and furnishings. On the other hand, the inventory of the
 debtors' business is listed at \$100,053.

1 account all resources likely to be available for such support
 2 when the debtor retires.

3 The debtors have claimed as exempt a total of \$75,318.43 in
 4 three different IRAs.⁴ The trustee objects on the grounds that
 5 it is unclear whether the debtors are attempting to exempt two
 6 IRAs and that subsections (a)(1) and (a)(2) do not cover IRAs.⁵
 7 However, the debtors have also claimed the IRAs as exempt under
 8 subsection (a)(3), which clearly covers IRAs. Further, nothing
 9 in the statute limits a debtor to a single IRA or joint debtors
 10 to two. These two grounds are thus without merit.

11 The trustee also objects on the ground that the debtors have
 12 not provided evidence that the amount claimed will be necessary
 13 for their support when they retire. In making this assessment,
 14 the court is to consider

15 the debtor's present and anticipated living expenses
 16 and income; the age and health of the debtor and his or
 17 her dependents; the debtor's ability to work and earn a
 18 living; the debtor's training, job skills and
 19 education; the debtor's other assets and their
 20 liquidity; the debtor's ability to save for retirement;
 21 and any special needs of the debtor and his or her
 22 dependents.

23 Gonzalez v. Davis (In re Davis), 323 B.R. 732, 735-36 (9th Cir.

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 28 4. The debtors list the "current value" of these assets at
 \$75,318.43, but the "value of the claimed exemption" twice, at
 \$100,000 each. Since the "value of the claimed exemption,"
 whether \$100,000 or \$200,000, exceeds the actual value of the
 assets, any ruling on the exemption at either of those figures
 would amount to a hypothetical ruling. Thus, the trustee's
 objection is sustained as to any amount over \$75,318.43, without
 prejudice to the debtors' right to amend their claim of
 exemptions in the event the actual values of the IRAs exceed that
 amount.

29 5. The trustee does not dispute that the accounts in
 question are IRAs.

1 BAP 2005), quoting In re Moffat, 119 B.R. 201, 206 (9th Cir. BAP
2 1990).

3 The debtors have testified as follows:

4 These retirement accounts are necessary for our
5 retirement, especially with the loss of our business in
6 this Chapter 7 case. At the present time these IRAs
7 are our only source of retirement income. We are now
8 attempting to rebuild a new business, however without
9 significant capital and the current economy, the
10 building of this business is slow and we are not
11 earning sufficient income to increase our retirement
12 accounts. We do anticipate retiring in the near
13 future, however at the present time we do not have
14 sufficient retirement savings to do so. Presently Guy
15 Lynn is 49 years old and Jamie Lynn is 52 years old.

16 Declaration of Guy Lynn and Jamie Lynn, filed June 3, 2009, DN
17 184, 4:1-10. The trustee has offered no reply to this evidence;
18 thus, the court has no reason to doubt its reliability.

19 Based on the debtors' testimony, and given their ages and
20 the fact that they are and for some years have been self-employed
21 in the business of making and selling crafts, the court concludes
22 that the \$75,318.43 will be necessary for their support when they
23 retire, whether that occurs in the near future or in another 10
24 or 15 years' time.

25 Further, the debtors' business obviously caters to persons
26 with discretionary income, and thus, is not likely to prosper in
27 the present economy. There is no evidence the debtors have any
28 other education, training, or marketable skills, or of other
significant exempt assets. Thus, the court concludes that the
IRAs will be necessary for the debtors' support upon retirement.

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1 **D. 2006 Ford Expedition**

2 The trustee objects to the debtors' exemption of \$2,550 in
3 equity in this vehicle, under § 704.010, contending the maximum
4 exemption amount is \$2,300. In accordance with § 703.150(b), the
5 amount of the allowable exemption is adjusted every three years.
6 As of April 1, 2007, the allowable amount is \$2,550;⁶ thus, this
7 objection will be overruled.

8 **E. Wells Fargo Trailer**

9 The trustee objects to the debtors' exemption of this item,
10 valued at \$800, under § 704.020, on the ground it is not a
11 household item or personal effect subject to exemption. The
12 trailer is on a list of items the debtors testify were purchased
13 for use by their family. They state that each item is an
14 ordinary item reasonably necessary for their family. While this
15 is vague, in the absence of any response by the trustee, and
16 given the liberality with which exemptions are to be construed,
17 the court will allow the exemption.

18 **F. Personal property held by Vi Fuchser Archer**

19 The trustee objects to the debtors' exemption, under
20 § 704.020, of an antique stove, aquarium, bubble-making machine,
21 and stained glass currently being held by debtor Jamie Lynn's
22 mother, Vi Fuchser Archer. The debtors value these items at a
23 total of \$21,000; the trustee objects that these items do not
24 qualify as household items or personal effects subject to
25 exemption.

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28 6. www.courtinfo.ca.gov/forms/documents/exemptions.pdf.

1 The debtors have not broken down the total value in this
 2 proceeding, but a breakdown was provided in connection with an
 3 earlier motion:⁷

4 Antique stove \$ 8,000
 5 Old glass \$12,000
 6 Bubble machine \$ 80
 7 Aquarium & black light \$ 120

8 Based on these values, and the debtors' testimony,⁸ the
 9 court finds the bubble machine, aquarium, and black light to be
 10 household goods, within the meaning of § 704.020. Given the
 11 debtors' background as artists and craftsmen, and their testimony
 12 that these items were purchased for personal use, not for resale,
 13 the court finds the stained glass also qualifies. The court is
 14 troubled by the unusual value of the antique stove, particularly
 15 when compared with the remainder of the debtors' household goods,
 16 valued at a total of \$14,515. However, in the absence of a
 17 response by the trustee, the court will credit the debtors'
 18 testimony as reliable, and will allow the exemption.

19 G. Inventory of Wild Things Beads

20 The trustee objects to the debtors' exemption of the
 21 inventory of their business, Wild Things Beads, under § 704.060,
 22 at \$6,750 for the debtor and \$6,750 for the joint debtor, on the
 23 ground that the list referred to was not attached, and thus, that
 24 it is unclear what assets the debtors sought to exempt. The

25 7. Exhibit C of Exhibits B-J in Support of Debtors'
 26 Response to Objections to Confirmation, filed June 4, 2008, DN
 27 44.

28 8. In their declaration in opposition to the Objection, the
 29 debtors testified to the dates they acquired these items and the
 30 uses to which they have been put. See Declaration of Guy Lynn
 31 and Jamie Lynn, filed June 3, 2009, DN 184, ¶ 4.

1 debtors respond that the trustee is in possession of all of the
2 inventory, that they have provided him with inventory lists, and
3 that they are not claiming any particular item as exempt, but
4 rather a total value of \$6,750 for each debtor.

5 The trustee and creditors had only 30 days from, in this
6 case, the filing date of the amended C-schedule in which to
7 object to the debtors' claim of exemptions. Fed. R. Bankr. P.
8 4003(b). Any objection after that date would be too late,
9 "whether or not [the debtors] had a colorable statutory basis for
10 claiming [the exemptions]." Taylor v. Freeland & Kronz, 503 U.S.
11 638, 643-44 (1992).

12 The rule applies, however, only where the schedule of
13 exemptions is "sufficient to notify the creditors and the trustee
14 exactly what property the debtor is claiming as exempt."
15 Preblich v. Battley, 181 F.3d 1048, 1052 (9th Cir. 1999). In
16 this case, the absence of the "attached list" apparently created
17 uncertainty for the trustee, but also for creditors.

18 In that the trustee did not reply to the debtors' contention
19 that they have provided him with the lists, and did not request
20 additional time to review those lists and to supplement his
21 objection, the court will assume he is satisfied with the record
22 as it now stands. In the absence of any further objection to the
23 claimed exemption, the objection will be overruled. The court is
24 not called upon to rule on the sufficiency of this claim of
25 exemption as regards creditors.

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III. Conclusion

2 As to the debtors' claim of exemption of their IRAs, the
3 Objection will be sustained as to any amount over \$75,318.43. In
4 all other respects, the Objection will be overruled. The court
5 will issue an appropriate order.

Dated: June 24, 2009

Robert Bardwil
ROBERT S. BARDWIL
United States Bankruptcy Judge

Certificate of Service

I certify that on June 24, 2009 a copy of the foregoing document was mailed to the following:

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